

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

TIMOTHY D. WILKINS,

Plaintiff,

v.

B. BAKER,

Defendant.

Case No. [23-cv-01387-HSG](#)

**ORDER OF DISMISSAL WITH LEAVE
TO AMEND**

Plaintiff, an inmate at San Quentin State Prison, has filed a *pro se* action pursuant to 42 U.S.C. § 1983. His complaint (Dkt. No. 1) is now before the Court for review under 28 U.S.C. § 1915A. Plaintiff has been granted leave to proceed *in forma pauperis* in a separate order.

DISCUSSION

A. Standard of Review

A federal court must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. *See* 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek monetary relief from a defendant who is immune from such relief. *See* 28 U.S.C. § 1915A(b)(1), (2). *Pro se* pleadings must, however, be liberally construed. *See United States v. Qazi*, 975 F.3d 989, 993 (9th Cir. 2020).

Federal Rule of Civil Procedure 8(a)(2) requires only “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). “Specific facts are not necessary; the statement need only “give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.” *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (citations omitted).

While Rule 8 does not require detailed factual allegations, it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation. *Ashcroft v. Iqbal*, 556 U.S. 662, 677–78 (2009). A pleading that offers only labels and conclusions, or a formulaic recitation of the elements of a cause of action, or naked assertions devoid of further factual enhancement does not suffice. *Id.* To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that the alleged violation was committed by a person acting under the color of state law. *See West v. Atkins*, 487 U.S. 42, 48 (1988).

B. Complaint

The complaint makes the following allegations. On September 16, 2022, Plaintiff filed a grievance regarding his housing placement, Grievance No. 306199. On October 3, 2022, defendant SQSP correctional sergeant B. Baker retaliated against Plaintiff for filing this complaint by issuing him a rules violation report, in violation of the First Amendment prohibition on retaliation for exercising protected conduct. *See generally* Dkt. No. 1.

The complaint is DISMISSED with leave to amend. The complaint proffers a conclusory assertion without factual enhancement. A formulaic recitation of the elements of a cause of action does not suffice to state a cognizable claim for relief. *Ashcroft*, 556 U.S. at 677–78. Plaintiff must provide more than a conclusory statement that defendant Baker retaliated against him to state a cognizable claim for First Amendment retaliation.

CONCLUSION


For the reasons set forth above, the Court DISMISSES the complaint with leave to amend. Within twenty-eight (28) days of the date of this order, Plaintiff shall file an amended complaint that addresses the identified deficiencies. The amended complaint must include the caption and civil case number used in this order, Case No. C 23-01387 HSG (PR) and the words “AMENDED COMPLAINT” on the first page. If using the court form complaint, Plaintiff must answer all the questions on the form in order for the action to proceed. An amended complaint completely replaces the previous complaints. *See Lacey v. Maricopa Cnty.*, 693 F.3d 896, 925 (9th Cir. 2012). Accordingly, Plaintiff must include in his amended complaint all the claims he wishes to

1 present and all of the defendants he wishes to sue, and may not incorporate material from the prior
2 complaint by reference.

3 Failure to file an amended complaint in accordance with this order in the time provided
4 will result in dismissal of this action without further notice to Plaintiff. The Clerk shall include
5 two copies of the court's complaint form with a copy of this order to Plaintiff.

6 **IT IS SO ORDERED.**

7 Dated: 7/7/2023

8 
9 HAYWOOD S. GILLIAM, JR.
United States District Judge

United States District Court
Northern District of California